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May 12, 2006

Michigan Supreme Court Clerk
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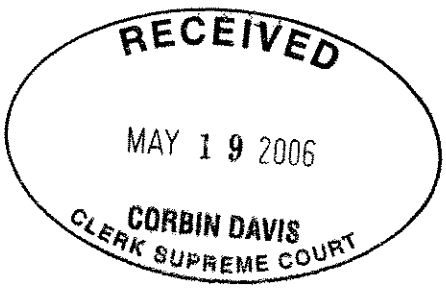

RE: HOLLINGER & COMPANY'S COMMENTS TO MICHIGAN SUPREME COURT PROPOSED ADMINISTRATIVE ORDER REGARDING ASBESTOS-RELATED DISEASE LITIGATION ADM FILE NUMBER 2003-47

Dear Clerk:

Hollinger & Company is a small, family-owned Bay City/Midland based insulation supply and contracting company. They performed services in various parts of the state of Michigan beginning in approximately 1954. Hollinger would have performed the services with the possible use of asbestos insulation products up until the early 1970's when these products were widely used. Their jobs and sales would include industrial, commercial, and educational facilities and therefore, would have a broad application to the current asbestos litigation. Hollinger was initially a signatory to the petition in 2003 for the adoption of an inactive docket. Hollinger has since advised its co-petitioners of its withdrawal from such a petition and believes that the adoption of the proposed court rules would be detrimental to Hollinger & Company and similar entities for the reasons stated herein. As such, Hollinger would request the Supreme Court take no action with respect to the inactive docket petition but rather, let such proposals be developed or denied through the legislative process.

I. Hollinger believes that the current systems provides a fair and efficient method in resolving asbestos related claims

As stated above, Hollinger initially supported the petition as filed in 2003. Their initial support was based upon the major concerns raised in the initial petition. Those being:

1. A fear of an increase in the number of claims being filed;
2. The cost of litigating those claims; and
3. The filing would overwhelm the court system and delay the disposition of the claims.

In the ensuing time period between the initial petition and the present, Hollinger has found that none of those fears have materialized. Instead, the procedures and practices implemented by a working group of judges, defense and Plaintiff's counsel have allowed for an efficient, predictable and manageable resolution of these claims.[1]

A. A Fear in the Number of Claims

At the time of the filing of the petition, Hollinger was aware that in a number of other adjacent industrial states, asbestos claims were being filed in the tens of thousands. Hollinger was concerned that due to the similar nature in the type of industries and structures in these states, Hollinger would also be faced with having to handle an unmanageable number of cases. This fear has never materialized. While new claims continue to be filed, it has been Hollinger's experience that the pending claims have actually decreased as it relates to Hollinger. There has been no experience, nor does there appear to be any indication that the initial fear of tens of thousands of claims would be filed or that the number of cases being made against Defendants such as Hollinger would become unmanageable. Hollinger believes that the history of the litigation to date demonstrates that in Michigan, we are not seeing the filing of thousands of cases similar to other jurisdictions which have imposed an inactive docket. As such, Hollinger believes that for the court to impose such a standard at this time would be inappropriate as the crisis regarding the number of cases does not exist.

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[1]Hollinger's own experience for the last two years has been that there were 69 fewer claims filed against Hollinger in 2005 as compared to 2004 (142 down from 211). Forty-six more cases were resolved during the 2005 time period than the preceding year, resulting in a total decrease in the total cases pending against Hollinger of 105. This has effectually resulted in a 25% decrease in the number of claims against Hollinger that are currently pending. In addition, Hollinger has seen that the average settlement it has paid to resolve a claim has decreased by a figure of $88.59 for the same time period.

B. Concern of Rising Litigation Costs

Hollinger was also concerned about the rising defense costs involved in handling this litigation. This concern was in part related to the fear of the increase in the number of mass filing of claims. A fear that, as stated above, has never materialized. In addition, Hollinger overestimated the projected cost that the defense of the individual claims would have. As this Court is aware, specific procedures and practices have been implemented through a cooperative effort of the Courts and counsel for both Plaintiff and Defendants. These procedures provide a streamline and effective method which greatly reduced the underlying litigation costs. In addition, two other factors exist which have held down litigation costs. Hollinger, like many Defendants, have hired counsel which represent more than one party and as such, its individual cost of defense is being spread over the parties in the litigation. Additionally, the litigation in large part relates to a number of designated sites where testimony and discovery has been completed for a number of years. As such, both parties are aware of what products were in place at what facilities and to what extent any exposure would have existed. In the period from the petition to date, Hollinger has raised the issue that it was improperly identified on a number of occasions. In no case, has Hollinger ever had to argue this position to a Court in a motion. Rather, the matter was almost always expediently resolved upon agreement with opposing counsel and without resorting to Court appearances, even where motions may have been filed. As liability and exposure issues do not have to be relitigated on a continual basis, there is a natural reduction in the cost of preparing the claims. Additionally, such liability issues also factor into negotiation positions and Defendant Hollinger has found for the most part, that it has not had to engage in protracted negotiations over claims which again, result in a reduction in the overall litigation cost.

As a result of these factors, Hollinger has seen that its average defense costs on a per-claim basis have either remained stable or decreased.

Based upon the fact that Hollinger's concerns over the rising number of the cases and resultant rising costs have not materialized, Hollinger does not believe that it is appropriate for the Supreme Court to impose the procedures contemplated under the proposed Court rule.

C. The Current Procedures in Place Provide for an Effective, Efficient and Prompt Disposition of the Pending Litigation

The third factor under which Hollinger initially supported the position was its fear that the number of cases would overwhelm the Court system and delay the disposition of the claims pending against Hollinger. As with the other concerns expressed in these comments, this fear also did not materialize. As the Court has heard from the comments of other parties and commentators, there is in place in all of the Courts in which this

litigation is pending, a specific Case Management Order which has been developed over time with the cooperative efforts of the Courts and counsel for the Plaintiffs and the Defendants. The fact that this cooperative agreement has worked for such a long period of time and without challenge to the appellate Courts demonstrates its effectiveness as it relates to all parties. Hollinger has also found that rather than overwhelming the Court system, Hollinger has not had to rely upon the Court for either determining dispositive issues or in participating in resolution of the individuals claims.

This Court should also be acutely aware that despite the number of claims that are being litigated in the asbestos litigation, there has been very few instances where the parties had to utilize the resources of the appellate Courts. One cannot help but notice that in similar areas such as no-fault litigation, there appears to be daily requirements for the appellate Courts to address whether an individual meets a certain legislative criteria of a serious impairment. By adopting a proposed standard, the Court is opening the door to a flood of appellate litigation over whether or not any individual claim meets this standard.[2] Rather than bringing the cases to a more rapid resolution will in fact result in cases being delayed and prolonged as well as increasing the underlying cost of the individual cases.

Finally, the docket system adopted by the Court has allowed for the disposition of these cases in a similar time frame as any other litigation. A review of any of the current Courts' jurisdictions trial dockets would indicate that the period between the filing of a case and it coming up for a firm trial date is not substantially different in asbestos litigation for that of any other litigation filed in the circuit Court. Moreover, the pretrial Case Management Order provides and allows the Plaintiff to accelerate the docket of certain claims and in most instances, such acceleration has been unopposed.

As the present system has effectively managed the current asbestos litigation, Hollinger does not believe that there is any necessity for the Supreme Court to intervene and proposed substantive changes which, in the long run, may only further delay the litigation.

II. <u>That the proposed Court rules for creating an inactive docket would conflict with pending legislation</u>

Hollinger, in addition to its previous comments, is concerned that the implementation of either of the proposed rules would conflict with either pending federal and state legislation. As this Court is well aware, legislation that would specifically address this asbestos litigation is presently pending in the U.S. Senate, the U.S. House of Representatives, and the Michigan legislature. The Michigan legislature is in fact, concurrently conducting hearings of legislation which seeks to impose medical criteria standards of a similar nature

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[2]In April, 2006, the Court of Appeals issued 14 separate opinions requiring a de novo review of the "serious impairment standard".

to the proposed rules. Additionally, the U.S. House of Representatives is also considering a national legislative program imposing the use of specific medical criteria. If the Court is to enter the precise area as the legislation in the form of a Court rule, such a rule would directly conflict with any of the proposed legislation, and only serve to create greater uncertainty and delay. Conversely, should the Michigan and federal legislation be specifically rejected by the elected officials, the Court would be imposing a requirement not only contrary to the common law, but in direct opposition to a determination of the legislative and/or executive branches of government which specifically rejected such a standard.

Hollinger believes because the imposition of the standard is being actively considered by the legislative bodies of both our state and federal governments, it should not be the subject of a Court rule which seeks to regulate an area of substantive law.

III. Conclusion

Hollinger, because of its prior activities, is in a unique position of being in a wide range of asbestos litigation. Because of this position, Hollinger had the same concerns as other petitioners in favor of the Court adopting an inactive docket, as many of the other petitioners who joined in on the inactive docket in the initial petition. However, Hollinger has come to realize in the ensuing two years that the current system in place provides a manageable and efficient means of resolving the litigation. The process currently in place was adopted and has worked with an unprecedented cooperative effort of both the Plaintiffs, the Defendants, and our judiciary. Hollinger believes that the adoption of the proposed rules are not only unnecessary in light of the history of the litigation, but are likely to create a system in which the cases will be greatly contested and rather than reaching the intended result will likely cause an increase in the cost of litigation and a burden on both the underlying trial Courts as well as the appellate Courts. Moreover, the adoption of an inactive docket by the use of a Court rule, while there is pending legislation of a similar nature would only serve to create conflict whereby the Supreme Court would be entering into an area of legislation and either adopting a conflicting rule or a rule in direct contradiction to the determination of the legislative and/or executive bodies. For these reasons, Hollinger would recommend and urge the Supreme Court to leave the current procedures in effect and to not adopt any additional rule changes.

Very truly yours,

DANIEL P. KING

DPK/rac
cc: msc_clerk@courts.mi.gov